

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller and Jon Wellinohoff.

PJM Interconnection, L.L.C. and
Allegheny Power

Docket No. RT01-98-001

ORDER GRANTING REHEARING, SEVERING PARTY, AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEEDINGS

(Issued September 18, 2006)

1. On June 21, 2006, American Municipal Power-Ohio, Inc. (AMP-Ohio)¹ asked the Commission to rule on its previously filed petition for rehearing. AMP-Ohio's rehearing request seeks reconsideration of a Commission order dated July 12, 2001.² Upon review of the instant record, the Commission concludes that although a settlement was accepted in the underlying proceeding, the Commission inadvertently overlooked one issue raised in AMP-Ohio's rehearing request. In this order, the Commission grants rehearing, severs AMP-Ohio from the settlement, and sets for hearing and settlement judge proceedings the limited issue of establishing a just and reasonable rate for PJM Interconnection, L.L.C. (PJM) transmission service from the Richard H. Gorsuch Generation Station for a locked-in period of time.

¹ AMP-Ohio is a not-for-profit Ohio corporation consisting of municipalities that own and operate electric generating and transmission facilities. Its primary purpose is to assist its member communities in meeting their electric and energy needs.

² *PJM Interconnection, L.L.C. and Allegheny Power*, 96 FERC ¶ 61,060 (2001) (July 2001 Order).

Background

2. On March 15, 2001, PJM and Allegheny Power (Allegheny) jointly submitted to the Commission a proposal for the creation of “PJM West,” pursuant to the Commission’s directives of Order No. 2000.³ The filing included proposed rates for transportation service to replace those being charged by Allegheny to its customers, including AMP-Ohio.⁴

3. On April 20, 2001, AMP-Ohio filed a protest to the PJM-West proposal. AMP-Ohio explained that it owned the 213-MW Gorsuch station, in Marietta, Ohio. Prior to PJM’s proposed expansion to include Allegheny, AMP-Ohio was purchasing approximately 100 MW of firm point-to-point transmission service from Allegheny, for the delivery of power from AMP-Ohio’s Gorsuch station into the FirstEnergy Corporation system to serve a portion of the needs of 47 of AMP-Ohio’s members. AMP-Ohio objected to the proposed border rate, i.e., the charge for transporting power into or out of the PJM system. Specifically, AMP-Ohio objected to the use of outdated cost data, the methodology used to determine the rate, and the potential for the over-recovery of costs by Allegheny. In addition, AMP-Ohio argued that the Commission should not permit the transmission rate for service from the Gorsuch station to increase from its existing point to point rate of \$1.49/kW/month (based on Allegheny’s open-access transmission tariff rate) to the proposed PJM border rate of \$2.065/kW/month. The proposed border rate consisted of a transmission component of \$1.765/kW/month and a “transmission revenue neutrality charge” of \$0.30/kW/month.⁵ AMP-Ohio contended that PJM’s proposed rates, representing an increase of between 39 percent and 49.6 percent, can not be justified, and were unjust and unreasonable.

³ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom.*, *Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴ On March 30, 2001, AMP-Ohio filed a timely motion to intervene in this proceeding on behalf of itself and its 85 public power communities, of which 79 are located in Ohio, two in West Virginia, and three in Pennsylvania.

⁵ The transmission revenue neutrality charge was intended to recover a major share of Allegheny’s claimed lost revenues and start-up costs relating to joining the PJM regional transmission organization (RTO). It was applied only to service leaving the PJM footprint.

4. Also, in its protest of April 20, 2001, AMP-Ohio raised a number of other issues which, as we will explain below, have been resolved through settlement by the parties. These issues included AMP-Ohio's contention that two of its members, the Cities of Philippi and New Martinsville, West Virginia, which purchased power and transmission services from Allegheny pursuant to power service agreements, would be subject to increased rates that were above and beyond the rates specified in Allegheny's existing contracts with these cities. AMP-Ohio also objected to the methodology used to determine the proposed rate for the Cities of Philippi and New Martinsville, and contended that it would lead to double recovery of costs. Further, AMP-Ohio protested that the financial data upon which the rates were based were stale and, therefore, not reflective of more recent reductions of Allegheny's financial costs. Finally, AMP-Ohio requested that the Commission require Allegheny to file a true-up mechanism to protect against overcharges in case Allegheny's projected lost revenue and start-up costs were overstated.

5. On July 12, 2001, the Commission issued an order approving the joint proposal by PJM and Allegheny to establish PJM West. The order also accepted the applicants' proposed rates for transmission service, subject to a number of conditions. For example, the Commission provisionally approved Allegheny's "entitlement to recover lost revenues associated with its membership in the PJM RTO through transitional surcharges, and the proposed design of these surcharges."⁶ However, the Commission noted that "Allegheny has not demonstrated the reasonableness of the specific surcharges it proposes. Specifically, Allegheny has failed to support the costs it claims it will incur in connection with its joining the PJM RTO, and has failed to support the derivation of its proposed surcharges."⁷ Therefore, the July 2001 Order directed Allegheny to make a compliance filing on "all rate issues discussed in the body of this order."⁸

6. On August 13, 2001, AMP-Ohio filed a request for rehearing and clarification of the July 2001 Order. In its August 13, 2001 filing, AMP-Ohio reiterated the issues it raised in its April 21, 2001 protest. It is this rehearing request that AMP-Ohio maintains has not been addressed by the Commission. On September 10, 2001, the Commission issued an Order Granting Rehearing for Further Consideration.

⁶ 96 FERC at 61,222.

⁷ *Id.*

⁸ *Id.* at Ordering Paragraph (B).

7. Also on September 10, 2001, PJM and Allegheny submitted a compliance filing in accordance with the Commission's July 2001 Order. The Commission accepted the rates for filing, by order issued on January 30, 2002, and suspended the rates, subject to the establishment of hearing procedures.⁹ The order directed Allegheny to provide additional support for its proposed rates, and to provide an estimate of Allegheny's share of revenues associated with regional "through-and-out" service.¹⁰ The order acknowledged rate issues raised by intervenors, with AMP-Ohio listed as a protestor, and directed that an evidentiary hearing be held to consider these matters.

8. On February 13, 2002, Allegheny filed an emergency request for clarification of the scope of the Commission's January 2002 Order and AMP-Ohio filed a motion requesting consideration of the issues it raised on rehearing of the July 2001 Order. On March 1, 2002, the Commission issued an Order Granting Clarification which addressed Allegheny's emergency request but did not address either AMP-Ohio's August 13, 2001 or February 13, 2002 pleadings.¹¹

9. The parties to this proceeding thereafter entered into settlement discussions. On March 29, 2002, Allegheny filed its first Offer of Settlement. On April 18, 2002, AMP-Ohio filed initial comments, noting that the drafted settlement resolved the issues specifically set for hearing, and included in a footnote the statement that "[T]he other issues raised in the rehearing, including those that pertain to AMP-Ohio members Philippi and New Martinsville, would be resolved by this offer of settlement, leaving only the border rate issue." In the instant proceeding, AMP-Ohio reiterated its position that its request for rehearing of the border rate for transmission service from the Gorsuch Station remained pending before the Commission.¹²

10. On the same date, Allegheny filed comments to the settlement which included a Stipulation and Agreement between Allegheny and AMP-Ohio dated April 17, 2002. The Stipulation included a number of provisions, including the following agreement:

⁹ 98 FERC ¶ 61,072 (2002) (January 2002 Order).

¹⁰ The terms "through-and-out rates" and "border rates" are often used interchangeably to refer to the transmission rate (and any applicable surcharges) imposed for crossing the boundary of a RTO.

¹¹ *PJM Interconnection, L.L.C. and Allegheny Power*, 98 FERC ¶ 61,235 (2002).

¹² AMP-Ohio initial comments at 1-2.

4. It is the intent of this Stipulation and Agreement that any issues AMP-Ohio wishes to raise with respect to the so-called PJM border rate may be raised in initial comments filed upon this Offer of Settlement, thereby allowing the Commission to decide the issues to be raised by AMP-Ohio as a matter of policy in the context of a contested settlement which includes this Stipulation and Agreement and the certified record as described in paragraph 3 above. To fully effectuate this intent, the parties recognize and agree that acceptance of the Offer of Settlement by the Commission without change would effectively constitute a denial of AMP-Ohio's rehearing request of August 13, 2001.

11. On April 30, 2002, the Presiding Judge found the first Offer of Settlement to be contested and therefore rejected it.

12. On May 21, 2002, Allegheny filed its second Offer of Settlement, which included a revision to reflect AMP-Ohio's position that the border rate remained unresolved. Accompanying the second Offer of Settlement was an Explanatory Statement acknowledging that still pending before the Commission was AMP-Ohio's request for rehearing of the July 2001 Order. On June 3, 2002, Allegheny Power and AMP-Ohio filed joint comments supporting the second Offer of Settlement. These comments include the following statement:

The Offer of Settlement, by its terms, does not resolve issues contained in the pending rehearing request filed by AMP-Ohio on August 13, 2001. That rehearing request raised issues respecting the contracts of two AMP-Ohio members (the City of Philippi, West Virginia, and the City of New Martinsville, West Virginia). These contract issues have been mooted as a result of the filing in FERC Docket No. ER02-1401-000. **The only pending issue raised in AMP-Ohio's rehearing request which remains viable is AMP-Ohio's protest to the PJM border rate.** (Emphasis added.)

13. The Commission accepted the second Offer of Settlement by delegated letter order issued on June 23, 2002.¹³ The letter order also directed that Docket No. RT01-98-002 be terminated.

¹³ *PJM Interconnection, L.L.C. and Allegheny Power*, 100 FERC ¶ 61,088 (2002).

14. On July 21, 2006, AMP-Ohio filed its Notice seeking Commission action. The rate at issue is the PJM border rate, which became effective, subject to refund on March 1, 2002. The transmission component was terminated as of December 1, 2004 when PJM's through and out rates were eliminated.¹⁴ The surcharge component was terminated when Allegheny's proposed transition costs were recovered. AMP-Ohio comments in its Notice that it has well in excess of \$1 million at stake.

Discussion

15. AMP-Ohio's Notice does not specify what issue or issues raised in its rehearing requests it asserts remain pending before the Commission. However, upon our review of this docket, we find that the remaining outstanding issue is the border rate applicable to the Gorsuch station. First, with respect to the rehearing issues affecting the Cities of Philippi and New Martinsville, the second Offer of Settlement included a revised network service rate for current network customers of Allegheny under the PJM open access transmission tariff. The Cities of Philippi and New Martinsville, West Virginia were included in this service rate. The second Offer of Settlement also specified that Allegheny's rates were set on the basis of a 1994 test period. Further, Allegheny and AMP-Ohio filed joint comments on June 3, 2002, specifying that the only outstanding issue was AMP-Ohio's issue with the PJM border rate. Based on these statements, we find that only the level of the border rate, including the transition surcharge, as it applies to the Gorsuch station, is at issue.

16. The history of the border rate issue begins with the joint application by PJM and Allegheny to establish PJM West. Their application stated that "the new PJM border rate along with all transitional charges will still result in significant transmission cost savings for market participants."¹⁵ AMP-Ohio protested the rate increase by stating:

The bottom line for AMP-Ohio here is that the creation of PJM West and the arrangements between [Allegheny] and PJM will provide no benefits to AMP-Ohio but will increase the charges for transmission "out" of the Gorsuch power by at least \$1,338,000 and 39%, *apart from the PJM Schedule 9 administrative charges*, and by \$1,711,011 and 49.6% if our interpretation of the applicability of those administrative charges is correct.

¹⁴ Citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,212 (2003); and *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004).

¹⁵ PJM and Allegheny March 15, 2001 transmittal letter at 7.

See Exhibit 1. A transmission rate increase of this magnitude is simply not an acceptable result of efforts that are supposedly designed to facilitate transmission. (Emphasis in original).¹⁶

17. Allegheny replied to AMP-Ohio's protest by stating:

The arguments of AMP-Ohio with respect to the Gorsuch plant amount to little more than a claim that this particular generating unit should not have to pay the same rolled-in rate for a transmission service to export from PJM that other generators pay. They gain the offsetting advantage of accessing the entire newly expanded PJM at a single non-pancaked rate.¹⁷

Although Allegheny stated that it disagreed with AMP-Ohio's contention that it was facing a 39 percent rate increase without taking into account administrative charges, Allegheny did not rebut AMP-Ohio's exhibit in which it showed in detail how its administrative costs would increase the transmission rate from the Gorsuch station by another 10.6 percent, for a total increase of 49.6 percent.

18. In our July 2001 Order, we found that "that the magnitude of the resulting through and out rate, including the [transmission revenue neutrality charge], is not out of line with the zone of delivery charges in PJM."¹⁸ We also rejected suggestions that transition costs should only apply to transactions crossing the Allegheny/PJM boundary.¹⁹ In its rehearing request of August 13, 2001, AMP-Ohio argued that the Commission failed to explain how a rate increase of almost 50 percent is just and reasonable or why the transitional costs should only be assessed to power transmitted out of the Allegheny territory.

19. Based upon the record submitted by the parties, we do not have sufficient evidence to rule upon the rehearing request of AMP-Ohio with respect to the border rate applicable to the Gorsuch station. The border rate for transmission service from the Gorsuch station has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. We, therefore, will sever this issue

¹⁶ AMP-Ohio April 20, 2001 protest at 2.

¹⁷ Allegheny's May 7, 2001 response to protests at footnote 15.

¹⁸ 96 FERC at 61,222.

¹⁹ *Id.*

from the settlement, and establish settlement judge and hearing procedures so that a full record can be developed on this issue if the parties are unable to settle this dispute. Since this dispute now involves a locked-in period and a fixed amount of dollars, settlement may be more feasible than was the case previously, and we strongly encourage the parties to settle instead of incurring substantial time and costs in litigation. Accordingly, we will grant rehearing on the limited issue of the appropriate level of the border rate, including transition charges, for transmission from the Gorsuch station out of the PJM. Since all other issues relating to the integration of Allegheny into PJM have been resolved, the only issue is the appropriate rate for transmission from the Gorsuch station.

20. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁰ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.²¹

The Commission orders:

(A) AMP-Ohio's request for rehearing is granted as discussed in the body of this order.

(B) AMP-Ohio is severed from the settlement with respect to the border rate applicable to the Gorsuch station.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred by the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rate for transmission service from the Gorsuch station. However, the hearing will be held in

²⁰ 18 C.F.R. § 385.603 (2006).

²¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience. (www.ferc.gov – click on Office of Administrative Law Judges).

abeyance to provide time for settlement judge procedures, as discussed in paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.